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**(2014) 03 KAR CK 0285**

**Karnataka High Court**

**Case No:** Criminal Appeal No. 59/2010

Vazeer Saheb

APPELLANT

Vs

The State of Karnataka

RESPONDENT

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**Date of Decision:** March 7, 2014

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Electricity Act, 1910 - Section 39, 44, 44(c)
- Penal Code, 1860 (IPC) - Section 379

**Hon'ble Judges:** N. Ananda, J

**Bench:** Single Bench

**Advocate:** Lokanath K., Advocate for the Appellant; B. Visweswaraiah, HCGP, Advocate for the Respondent

**Final Decision:** Partly Allowed

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**Judgement**

N. Ananda, J.

The appellant was tried and convicted for an offence punishable under Sections 39 of the Indian Electricity Act, 1910 and Section 379 IPC. Therefore, he is before this court.

2. I have heard Sri. Lokanath K., learned counsel for accused and learned Government Advocate for the State.

3. It is the case of prosecution that accused being the registered consumer of installation bearing R.R. No. C-4P-2685 which had been installed for running his plastic factory under the name and style of "Rameeza Plastic Factory" situate at No. 1435, Behind Ambedkar College, Kadugondanahalli, Bangalore, had tampered the meter bearing R.R. No. C-4P-2685 and rewinded the disc and committed theft of electric energy worth Rs. 3,99,068/-, thereby committed an offence punishable under Sections 39 of the Indian Electricity Act, 1910 and Section 379 IPC.

4. The prosecution has relied on the evidence of PW.1-M.B. Shivashankar, Junior Engineer of KPTCL, MT Division, PW.2-J.V. Sequera-Assistant Engineer of KPTCL, M.R. Division, PW.3-N.P. Kantharaju, Assistant Executive Engineer, KPTCL, Vigilance Squad, PW.5-Moodaligowda, Head Constable of Vigilance Squad and evidence of independent witness namely PW.4-Krishnamurthy.

5. PW.1-M.B. Shivashankar has deposed; that in the year 1998, he was working as a Junior Engineer in KPTCL, MT Division. On 20.10.1998 at about 1.30 p.m., he visited the plastic factory of accused situate in Kadugondanahalli. On inspection of the meter, he found the sealing wire of terminal cover of meter was cut and meter had been opened to rewind the disc to commit theft of electricity. PW.1 after examination of meter had given a certificate.

During cross-examination, he has reiterated the version given in the examination-in-chief. He has denied the suggestion that it is not possible to tamper the meter to rewind the disc. He has denied the suggestion that sealing wire of the terminal cover was not cut. He has denied the suggestion that PW.1 and others demanded bribe from accused, the accused refused to bribe them, therefore, he was falsely implicated.

6. PW.2-J.V. Sequera has deposed; in the year 1998, he was working as an Assistant Engineer in MRD Division; he had received the meter on 19.11.1998; they found that terminal cover of the meter was cut; on examination of the meter, they found that disc of the meter had been rewinded to commit theft of electric energy.

During cross-examination, he has denied the suggestion that it is not possible to rewind the disc.

7. PW.3-N.P. Kantharaju was working as an Assistant Executive Engineer in KPTCL Vigilance Squad. PW.3 has deposed; that he had visited the plastic factory of accused on the aforesaid date; the machineries installed in the factory were running with electric power; when they tested the meter, they found the sealing wire of terminal cover was cut. When they removed the terminal cover, they found that the disc had been rewinded to commit theft of electric energy.

During cross-examination, he has reiterated the version given in examination-in-chief. He has denied the suggestion that it is not possible to tamper the electric meter.

8. PW.4-Krishnamurthy is an independent witness. He has deposed that on 20.10.1998, the officials of Vigilance Squad of KPTCL were examining the meter in the factory or accused; the officials of Vigilance Squad told PW.4 that there was a hole in the meter and the rotation of disc had been stopped. The evidence of PW.4 is not consistent with the aforesaid witnesses yet, his evidence that aforesaid officials of KPTCL Vigilance Squad had visited the factory of accused on 20.10.1998 would lend corroboration to evidence of PW's. 1 to 3.

9. PW.5-Mudaligowda was working as Head Constable in KPTCL Vigilance Squad. PW.5 has deposed; that on 20.10.1998, at about 1.30 p.m., the Vigilance Squad including PW.5 visited the factory premises of accused. He found that meter had been tampered.
10. The evidence of PW.6-Jayaprakash Gowda relates to registration and investigation of the case.
11. When the accused was examined u/s 313 Cr.P.C., he has not denied that he was the registered consumer of installation bearing R.R. No. C-4P-2685. He has stated that the officials of Vigilance Squad demanded bribe from him, he refused to bribe them, therefore, they took away the meter.
- If the officials of Vigilance Squad had demanded bribe from the accused and they had taken away the meter for not bribing the officials, accused would have definitely approached the higher officials to complain about the conduct of members of the vigilance squad. The defence of accused is an after thought. The evidence of PW"s. 1 to 4 that accused had tampered the meter to rewind the disc to commit theft of electric energy does not suffer from any discrepancy.
12. In a decision reported in [Jagarnath Singh Vs. B.S. Ramaswamy](#), and Sohari Lal (in Crl. A. No. 130 of 1963) -vs.- B.S. Ramaswamy (now Krishna Murthy) and another the Supreme Court has held:
- Where the consumer of electric energy breaks the seal of the meter and exposes the stud hole permitting the insertion of foreign material inside the meter retarding the rotation of the inside disc, the exposure amounts to an "artificial means" within meaning of S. 44(c) for preventing the meter from duly registering the energy supplied. For purposes of S. 44, the existence of such an artificial means raises the presumption that the consumer, in whose custody or control the meter is, willfully and knowingly prevented the meter from duly registering. To raise this presumption, it is not necessary to prove also that the consumer was responsible for the artificial means or that the meter was actually prevented from duly registering.
13. In the case on hand, the prosecution has proved that the meter installed in the plastic factory of accused had been tampered. The accused has not adduced evidence to prove the contra. The accused has also not challenged the back billing charges wherein the Board has claimed a sum of Rs. 3,99,068/-.
14. The learned Sessions Judge on proper appreciation of evidence has convicted the accused of an offence punishable u/s 39 of the Indian Electricity Act, 1910. There are no reasons to interfere with the impugned judgment of conviction.
15. The learned counsel for accused submits that the accused has closed the factory, therefore, a lenient view may be taken in the matter of sentence.

16. The learned Government Advocate would submit that theft of electric energy not only involves the interest of the Board but also involves the interest of public at large. The accused has not made good the amount shown in the back billing. Therefore, accused does not deserve any lenient view.

17. Having regard to aggravating and mitigating circumstances, I deem it proper to sentence the accused to pay fine of Rs. 1,00,000/- in default, to undergo simple imprisonment for a period of six months for an offence punishable u/s 39 of the Indian Electricity Act, 1910. In view of the above, there is no need to pass separate sentence for an offence punishable u/s 379 IPC.

18. In the result, I pass the following:

#### ORDER

The appeal is accepted in part. The conviction of accused for an offence punishable u/s 39 of the Indian Electricity Act, 1910 is confirmed however, the sentence is modified. Accused is sentenced to pay a fine of Rs. 1,00,000/- in default, to undergo simple imprisonment for a period of six months for an offence punishable u/s 39 of the Indian Electricity Act, 1910.

Out of the fine amount to be deposited by accused, a sum of Rs. 90,000/- shall be paid to KPTCL.